



Signed and Filed: May 2, 2024

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
- and -) Chapter 11
PACIFIC GAS AND ELECTRIC COMPANY,) Jointly Administered
Reorganized Debtors.)
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

ORDER DENYING WILLIAM B. ABRAMS' MOTION TO STAY

On April 4, 2024, interested party William B. Abrams filed a Motion to Stay the Administration Execution and Enforcement of Victim Releases as Defined Within the Fire Victim Trust Agreement Pending United States Supreme Court Ruling and Pursuant to 11 U.S.C. § 105(a) ("Motion") (Dkt. 14396). The court set a mandatory response deadline of April 29, 2024 for the Fire Victim Trust ("FVT") and the same date as an optional

1 response deadline for any other interested party. On April 18,
2 2024, the Cathi Yanni, Trustee of the FVT, duly filed a Response
3 (Dkt. 14424). No other responses to the Motion were filed on or
4 before the April 29, 2024 deadline.

5 Upon due consideration and for the reasons set forth below,
6 the court denies the Motion.

7 Mr. Abrams' Motion seeks to stay a requirement that Fire
8 Victim Claimants sign a general release ("Release") of any
9 potential claims against the FVT or related entities and persons
10 prior to receipt of allowed compensation from the FVT, pending
11 the outcome of *Harrington v. Purdue Pharma L.P.* No. 23-124
12 ("*Purdue Pharma*"). The Supreme Court heard oral arguments in
13 *Purdue Pharma* on December 4, 2023, and a forthcoming decision in
14 the case may determine whether it is permissible for a Chapter
15 11 plan to include non-debtor third party releases without
16 consent of claimants. Mr. Abrams argues that staying the
17 Release requirement "will avoid potential conflicting
18 interpretations of the law and ensure consistency with the
19 Supreme Court's guidance." While much of the Motion is devoted
20 to the potential impact of *Purdue Pharma*, he also makes the
21 unfounded argument that the Fire Victim Claimants are also being
22 subjected to a late-stage rug pull: That Section 10.9 of the
23 Disclosure Statement and Proposed Chapter 11 Plan that Fire
24 Victim Claimants voted on (Dkt. 6353) states that all claimants
25 could choose to opt-in to liability releases at the time of
26 voting for the Plan, while now the FVT is forcing claimants to
27 sign wide-ranging releases in order to receive any distribution.

1 The court first addresses Mr. Abrams' apparent confusion
2 regarding the opt-in liability release. The court's docket
3 reflects the long and public process which culminated in the
4 Order Confirming Plan (Dkt. 8053) ("OCP"); the creation of the
5 FVT; and the creation of the FVT Claims Resolutions Procedures
6 ("CRP") for Fire Victim Claimants. As a result of that process,
7 the Disclosure Statement and Proposed Chapter 11 Plan at Section
8 10.9 cited by Mr. Abrams did provide for an opt-in release of
9 claims against various parties for actions undertaken during the
10 bankruptcy process, meaning that any vote-casting claimant would
11 have to affirmatively agree to release named parties from
12 potential claims that relate to acts taken by those parties
13 during the bankruptcy process. That opt-in provision had
14 nothing to do with the establishment of the FVT or the CRP, and
15 the Release Mr. Abrams seeks to stay are not governed by the
16 Disclosure Statement or the Confirmed Plan beyond the Plan's
17 creation of and implementation of the FVT and CRP. Any argument
18 by Mr. Abrams that the FVT is attempting to mislead Fire Victim
19 Claimants or this court by forcing a liability release prior to
20 distribution of funds in light of Section 10.9 is simply
21 incorrect.

22 Next, the court addresses the relevance of the pending
23 *Purdue Pharma* case on Section 10.9¹ and the separate releases
24 promulgated by the CRP against which Mr. Abrams seeks a stay.

25
26 ¹ Even though, as explained above, Section 10.9 has no bearing on
27 Mr. Abrams' concerns regarding the Release requirement for Fire
28 Victim Claimants, the court will still address it in relation to
the *Purdue Pharma* case in the interest of fully addressing the
Motion.

1 As to Section 10.9, the court and other stakeholders took
2 pains to make clear, after multiple rounds of hearings and
3 compromise, and with the addition of Section 10.8, that this
4 opt-in provision was an exculpation clause, which is permitted
5 under Ninth Circuit law, *see Blixseth v. Credit Suisse*, 961 F.3d
6 1074, 1084-85 (9th Cir. 2020), and not a third-party release of
7 any sort. As *Blixseth* explains, exculpation clauses are meant
8 for non-debtor professionals and individuals involved in a
9 debtor's bankruptcy process and are "focused on acts committed
10 as part of bankruptcy proceedings" (*Id.*). Exculpation clauses
11 do not release third parties for underlying debts or acts that
12 may have led to bankruptcy, as opposed to third-party releases,
13 which may release non-debtor third parties for any type of claim
14 accrued pre-bankruptcy. Page 51 of the OCP, as well as Sections
15 10.8 and 10.9 of the Plan attached to the OCP, all state in bold
16 typeface that Section 10.9 describes an exculpation clause
17 relating solely to acts committed by Exculpated Parties (as
18 defined in the Plan attached to the OCP) during the bankruptcy,
19 and nothing more. Further, both Exculpated Parties and Released
20 Parties (also defined in the Plan attached to the OCP) were
21 subject to affirmative, consensual opt-ins by every entity or
22 individual casting a ballot. The consensual releases enshrined
23 in the OCP would not be affected by the outcome of *Purdue*
24 *Pharma*, which concerns only non-consensual third-party releases.

25 Turning to the Release contained in the CRP, the FVT
26 accurately recounts the procedural history of these releases.
27 On March 3, 2020, the Tort Claimants Committee filed a *Notice of*
28 *Filing of Proposed Fire Victim Trust Agreement and Proposed Fire*

1 *Victim Claims Resolutions Procedures* (Dkt. 6049). This
2 document, as with every other part of the Plan process, was the
3 subject of heavy scrutiny and negotiation. Ultimately, the
4 Trust Agreement and CRP were made final as part of the *Ninth*
5 *Supplement to Plan Supplement in Connection with Debtors' and*
6 *Shareholder Proponents' Joint Chapter 11 Plan of Reorganization*
7 (Dkt. 8057) and incorporated by the OCP. From that earliest
8 iteration of the Trust Agreement and CRP to the final version
9 incorporated by the OCP, Fire Victim Claimants were required to
10 execute the Release as a precondition to receiving a
11 distribution from the FVT for approved claims. Only certain
12 government entities that objected to the release provisions
13 (Dkt. 7973) are excepted, and the timeframe of the Release was
14 narrowed in its final iteration.

15 While called a "Claimant Release and Indemnification in
16 Connection with the Fire Victim Trust Awards," this again is not
17 the type of third-party release contemplated by *Purdue Pharma*,
18 and is limited to, in very simple terms, the release of any
19 party related to the FVT, Trust Oversight Committee, Claims
20 Administrator, or Special Master for any claim related to Trust
21 Agreement, CRP, Plan, or any other part of the bankruptcy
22 process. In short, this Release is a proper exculpation clause
23 that was duly served with notice to affected parties, and
24 extensively revised prior to its final entry. No matter the
25 outcome of *Purdue Pharma*, the releases to be signed by Fire
26 Victim Claimants would not be affected, and those Fire Victim
27 Claimants' due process or other constitutional rights are not
28 implicated by the existence of the required release.

1 Accordingly, the Motion is DENIED.

2 ****END OF ORDER****

COURT SERVICE LIST

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